By Senators Scofield, Marsh, Ward, Reed, Allen, Livingston, 
Jones, Whatley, Price, Holley, Waggoner, Williams, Sessions, 
Chesteen, Beasley, Albritton, Chambliss, Smitherman and 
Singleton 
RFD: Fiscal Responsibility and Economic Development 
First Read: 19-MAR-19
ENROLLED, An Act,

To amend sections 41-23-212, 41-23-213 and 41-23-214, Code of Alabama 1975, to change the definition of an "unserved area", increase the percentage of project costs that may be funded through the Act, and to broaden the permitted use of other federal and state support, including loans and grants, in projects receiving grants under the Act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-23-212, 41-23-213 and 41-23-214, Code of Alabama 1975, are amended to read as follows:

"§41-23-212.

For the purposes of this article, the following words have the following meanings:

"(1) ADECA. The Alabama Department of Economic and Community Affairs.

"(2) END USER. A residential, business, institutional, or government entity that uses broadband services for its own purposes and does not resell such broadband services to other entities. An internet service provider (ISP) and mobile wireless service provider are not an end user for the purposes of this act."
"(3) MIDDLE MILE PROJECT. A broadband infrastructure project that does not provide broadband service to end users or to end-user devices.

"(4) MINIMUM SERVICE THRESHOLD. A connection to the Internet that provides capacity for transmission at an average speed per customer of at least \( \geq 25 \) megabits (\( \geq 25 \) Mbps) per second downstream and at least \( \geq 3 \) megabits (\( \geq 3 \) Mbps) per second upstream.

"(5) RURAL AREA. Any area within this state not included within the boundaries of any incorporated city or town having a population in excess of 25,000 inhabitants, according to the last federal census.

"(6) UNSERVED AREA. Any rural area in which there is not at least one provider of terrestrial broadband service that is either: (1) offering a connection to the Internet meeting the minimum service threshold; or (2) is required, under the terms of the Federal Universal Service Fund or other federal or state grant, to provide a connection to the Internet at speeds meeting the minimum service threshold by March 28, 2023.

"§41-23-213.

"(a) The Director of ADECA may establish and administer the broadband accessibility grant program for the purpose of promoting the deployment and adoption of broadband Internet access services to unserved areas. By June 26, 2018,
the director shall adopt rules and policies to administer the program and begin to accept applications for grants, and shall adopt such rules as may be necessary to meet the future needs of the grant program.

"(b) The program shall be administered pursuant to policies developed by ADECA in compliance with this article. The policies shall provide for the awarding of grants to non-governmental entities that are cooperatives, corporations, limited liability companies, partnerships, or other private business entities that provide broadband services. Nothing in this article shall expand the authority under state law of any entity to provide broadband service.

"(c) There is hereby created the Alabama Broadband Accessibility Fund in the State Treasury. The fund is subject to appropriations by the Legislature and gifts, grants, and other donations received by ADECA for the broadband accessibility grant program or fund. ADECA may not spend appropriations for the program for purposes other than those listed in this section. Any monies appropriated to ADECA for broadband grants that are unspent at the end of a fiscal year shall be carried over for use by the program in the next fiscal year. ADECA shall develop rules ensuring that expenses incurred to administer the program must not exceed the lesser of seventy percent (70%) of the total amount appropriated for the program in any fiscal year or seven
hundred fifty thousand dollars ($750,000). Moneys in the fund shall be invested by the State Treasurer for the sole benefit of the fund.

"(d) (1) Individual grants awarded by ADECA under this section may only be awarded for projects in unserved areas, and may not exceed the lesser of:

"a. Twenty Thirty-five percent (35%) of the project costs; or

"b. One million five hundred thousand dollars ($1,500,000) for projects that will be capable of transmitting broadband signals at or above the minimum service threshold.

"Seven hundred fifty thousand dollars ($750,000) for projects that will result in transmitting broadband signals at speeds of at least 10 megabits per second of download speed and one megabit per second of upload speed.

"c. One million four hundred thousand dollars ($1,400,000) for projects that will result in transmitting broadband signals at speeds of at least 25 megabits per second of download speed and three megabits per second of upload speed.

"(2) Grants may be given to any qualified entity pursuant to subsection (b) that meets the service criteria for expenditures after March 28, 2018.
(3) ADECA shall ensure that not less than 40 percent of funds appropriated for grants be utilized in unincorporated areas of the state.

(4) Subject to the limitations in this subsection, grants shall be awarded pursuant to the service criteria developed by ADECA, with priority given to projects that meet any of the following:

a. Seek to leverage grant funds through private investment and extension of existing infrastructure.

b. Serve locations with demonstrated community support, including, but not limited to, documented support from local government.

c. Demonstrate the operator's technical and managerial capabilities to complete the project within two years of the grant.

d. Demonstrate the applicants' necessary financial resources.

e. Are most cost effective and technically efficient in that they propose to serve the highest number of unserved homes, businesses and community anchor points for the least cost and best level of service, emphasizing projects including the highest broadband speeds.

f. Provide material broadband enhancement to hospitals located in rural areas as defined in Section 22-21-20.
"g. Support local libraries in this state for the purpose of assisting the libraries in offering digital literacy training pursuant to state library and archive guidelines.

"(5) For the purposes of awarding grants, ADECA shall take into consideration the average pole attachment rates that a grant applicant charges to an unaffiliated entity, provided that this subdivision (5) shall not apply to a utility as defined under Section 37-4-1 (7)a.

"(6) In order to promote the deployment of grant funds in an inclusive manner that is consistent with the racial, gender, geographic, urban, rural, and economic diversity of the state, ADECA may give additional consideration to an applicant that provides documentation that it has been certified by the ADECA Office of Minority Business Enterprise or otherwise as a Disadvantaged Business Enterprise. For projects funded under this act, ADECA shall encourage grant applicants to use vendors and subcontractors that have been certified by the Office of Minority Business Enterprise or that are Disadvantaged Business Enterprises. ADECA shall include in its report to the Alabama Rural Broadband Oversight Committee a list of entities certified by the Office of Minority Business Enterprise and Disadvantaged Business Enterprises that have been awarded grants since the prior report.
"(e) The first annual commencement date to submit grant applications shall be by May 27, 2010, and shall be March 1 in each subsequent year. For each fiscal year in which grant funds are available, ADECA shall accept applications within a 150-day 90-day grant window after the annual commencement date that it shall establish. Applications for eligible projects will be evaluated according to a scoring system developed by ADECA that incorporates the priorities listed in this section, with grant awards published within 90 days after expiration of the filing window. Grant applications shall be published by ADECA on the Internet at the end of the filing window, and existing service providers shall have 30 business days from the date of publication to file objections to the eligibility of a proposed project. ADECA shall address any objections within 30 days of submission and shall make any appropriate changes to grant awards based on a finding of ineligibility resulting from such protest. Subject to such protest procedure, grants issued by ADECA shall be conditioned upon compliance with the terms of the grant but shall not otherwise be revocable. Providers' grants shall be paid within 30 days upon ADECA receiving written certification of the completion of the project and evidence of compliance with the terms of the grant as prescribed by ADECA.

"(f) Grants shall be conditioned on project completion within two years of awarding of the grant. If a
recipient fails to complete a project within the two-year
deadline due to reasons other than delay caused by a
government entity, ADECA may revoke the grant in its entirety
and rededicate the funds to a new recipient.

"(g) ADECA shall condition the release of any grant
funds awarded under this chapter on:

"(1) the progressive completion, as measured on not
more than a quarterly basis, of the approved project; and

"(2) operational testing, when possible, to confirm
the level of service proposed in the grant application. Such
regulations shall not exceed in degree or differ in kind from
testing and reporting requirements imposed on the grant
recipient by the Federal Communications Commission, as
adjusted for the service specifications in the ADECA grant
agreement.

"(g) (h) Notwithstanding any other provision of this
section, eligible projects shall include projects any of the
following:

"(1) Projects to serve unserved areas in which the
grant applicant is either or both: (i) an existing or future
service provider which has or will receive support through
federal universal service funding programs designed
specifically to encourage broadband deployment in an area
without broadband access; or (ii) an existing or future
service provider which has or will receive other forms of
federal or state financial support or assistance, such as a grant or loan from the United States Department of Agriculture; provided, however, that any award of state funds under this act, when combined with other forms of state or federal support or assistance dedicated to the project, other than interest-bearing loans, may not exceed sixty percent (60%) of the total project costs. Nothing in this section shall prohibit a grant applicant who has not previously received any federal or state funds, grants, or loans for broadband deployment from applying for and receiving grant funds under this act, that have received funds through other federal universal service funding programs designed specifically to encourage broadband deployment in an area without broadband access in an amount not exceeding 50 percent of the total project cost; provided, however, that any award of state funds may only be utilized to either (i) fund project components that extend beyond the specifications supported by the federal funding, the eligible components being an extension of service to unserved rural areas not otherwise served by the federally supported project, or (ii) ensure that areas being served by the federal funding at speeds less than 25 megabits per second of download speed and three megabits per second of upload speed will, in fact, receive faster speeds of not less than 25 megabits per second of download speed and three megabits per second of upload speed. Grants
issued under this subsection shall not exceed 40 percent of total grant funding, with such grants not exceeding 20 percent of total project costs.

"(2) Middle Mile Projects, where the applicant demonstrates that the project will connect other service providers eligible for grants under this section with broadband infrastructure further upstream in order to enable such providers to offer broadband service to end users; provided that eligible projects under this subdivision may include projects in (i) an unserved area or (ii) a rural area that does not meet the definition of an unserved area but otherwise meets the requirements of this section, for which the grant applicant demonstrates, by specific evidence, the need for greater broadband speeds, capacity, or service which is not being offered by an existing service provider.

"(3) Projects to provide broadband service to a specific hospital, public school, public safety, or economic development site in a rural area that does not meet the definition of an unserved area but otherwise meets the requirements of this section, for which the grant applicant demonstrates, by specific evidence, the need for greater broadband speeds, capacity, or service which is not being offered by an existing service provider.
(4) Grants issued under subdivisions (2) and (3) shall not exceed forty percent (40%) of the total funds appropriated for grants on an annual basis.

§41-23-214.

(a) There is created the Alabama Rural Broadband Oversight Committee. The oversight committee shall consist of the Chair of the House Ways and Means Education Committee or his or her designee, the Chair of the Senate Finance and Taxation Education Committee or his or her designee, two members appointed by the Speaker of the House of Representatives, two members appointed by the President Pro Tempore of the Senate, and the Director of ADECA or his or her designee. The oversight committee shall meet at least annually, provide general oversight of the implementation of the article, and recommend further statutory changes to promote rural broadband development.

(b) The committee shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(c) For any year in which grants are distributed under the program, ADECA shall produce a quarterly report on the status of grants under the program to the Oversight Committee, including progress toward increased access to and adoption of broadband services. The report shall be provided at the oversight committee's first meeting of the year and also be published on ADECA's website. ADECA shall provide a
copy of the report to the Governor, the Alabama Senate President Pro Tempore, the Alabama Senate Minority Leader, the Speaker of the Alabama House of Representatives, and the Alabama House of Representatives Minority Leader. By March 28, 2019, ADECA shall produce a report on the availability of broadband within the state."

Section 2. Nothing in this act shall affect the approval and continued funding of grants awarded prior to the effective date of this act.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

Section 4. This act shall become effective immediately following the passage and approval of this act by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB90

Senate 08-MAY-19
I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 30-MAY-19
I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris,
Secretary.

House of Representatives
Passed: 28-MAY-19, as amended

House of Representatives
Passed: 30-MAY-2019, as amended by Conference Committee Report.

APPROVED May 30, 2019

TIME 11:00 a.m.

By: Senator Scofield

GOVERNOR
HOUSE OF REPRESENTATIVES

R. 3 at length and passed:
Yeas 102 Nays 0 Abs 0
Date 5-28-19
Amended

JEFF WOODARD, Clerk